

The 8th February, 1972

No. 1364/A(I).—In exercise of the powers conferred by section 40 of the Punjab Laws Act, 1872, the Government of Haryana hereby confers upon each of the following CBI cadets, within the limits of the Haryana State, the powers which may be exercised by a police officer under the Police Act, 1861, from the date from which each of them reports for duty in the district noted below against his name till such time he completes his training in the State of Haryana:—

- |                                  |           |
|----------------------------------|-----------|
| 1. S.I. Harshamshir Singh Chopra | .. Rohtak |
| 2- S.I. Summitter Kumar          | .. Karnal |
| 3. S.I. Harbhajan Ram            | .. Hissar |

J. C. VADHWA, Joint Secy.

#### MEDICAL AND HEALTH DEPARTMENT

The 4th February, 1972

No. 1307-ASOIII-HBII-72/4665.—In exercise of the powers conferred by section 3 of the Punjab Homoeopathic Practitioners Act, 1965, Government of India, Ministry of Home Affairs, Order F. No. 17/1/68-SR, dated the 28th March, 1969 and in supersession of Haryana Government, Medical and Health Department, Notification No. 2132-ASOIII-HBII-70, dated the 31st March, 1970, the Governor of Haryana hereby establishes with immediate effect, the Council of Homocopathic System of Medicine, Haryana, consisting of the following members, namely :—

1. Director, Health Services, Haryana;
2. Deputy Director (Health), Haryana ;
3. Dr. Surendra Mohan, Railway Road, Ambala City ;
4. Dr. Naunihal Singh, Railway Road, Rohtak ;
5. Dr. A.C. Uppal, Railway Road, Rohtak ;
6. Dr. Jaswant Rai Malhotra, Ram Gali, E/73, Karnal ;
7. Dr. Ram Saroop, ex-M.L.A., Khumharan Kuna, Karnal ;
8. Dr. S.P. Bidani, Bazar Vakilan, Hissar ;
9. Dr. M. M. Singhal, Jind ;
10. Dr. Subash C. Sharma, Near Kali Bari, Ambala Cantt. ;
11. Dr. Ishwer Singh Taneja, Gurgaon.

Further, the Governor of Haryana hereby nominates the Director, Health Services, Haryana to be the Chairman of the Council.

B.L. AHUJA, Secy.

#### FINANCE (LOTTERIES) DEPARTMENT

The 7th February, 1972

No. DOL/HR/72/783.—The Governor of Haryana is pleased to select the following persons as Judges for the supervision of the Weekly Draw to be held on 8th February, 1972 :—

1. Shri M. L. Trighatia, I.A.S.,  
Deputy Secretary to Government, Haryana,  
Finance Department.

2. Shri N. K. Puri,  
Joint Registrar, Co-operative Societies,  
Haryana, Chandigarh.
3. Shri O. P. Malik,  
Examiner, Local Fund Accounts,  
Haryana, Chandigarh.
4. Mrs. H. L. Gugnani,  
wife of Shri H. L. Gugnani, I.A.S.,  
Deputy Secretary to Government, Haryana,  
Revenue Department.
5. Shri Murari Singh, Retd. H.C.S.,  
Officer on Special Duty,  
Kothi No. 530, Sector 18-B,  
Chandigarh.

H. K. JAIN,

Deputy Secretary to Government, Haryana and  
Director of Lotteries, Haryana,  
Chandigarh.

#### LABOUR DEPARTMENT

The 3rd February, 1972

No. 1258-4Lab-72/4204.—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Industrial Tribunal, Haryana, Faridabad, in respect of the dispute between the workmen and the management of :—

- (1) M/s Vishan Sarup and Co., Railway Contractor, Rewari (Gurgaon).
- (2) M/s Virender Gupta, Railway Contractor, Rewari (Gurgaon).
- (3) M/s Gurdial Sharma, Railway Contractor, Rewari (Gurgaon).
- (4) M/s Bhagwati Devi, Railway Contractor, Rewari (Gurgaon).

BEFORE SHRI O.P. SHARMA, PRESIDING OFFICER, INDUSTRIAL TRIBUNAL, HARYANA,  
FARIDABAD

Reference Nos. 109, 112, 113 and 114 of 1970

*between*

The workmen and the management of—

- (1) M/s Vishan Sarup and Co., Railway Contractor, Rewari, (Gurgaon).
- (2) M/s Virender Gupta, Railway Contractor, Rewari (Gurgaon).
- (3) M/s Gurdial Sharma, Railway Contractor, Rewari (Gurgaon).
- (4) M/s Bhagwati Devi, Railway Contractor, Rewari (Gurgaon).

*Presents.—*

Shri C.B. Kaushik, for the workmen.

Shri Sudarshan Parkash Gupta, for the management.

#### AWARD

M/s Vishan Sarup and Co., Railway Contractor, Rewari (Gurgaon), M/s Virender Gupta, Railway Contractor Rewari (Gurgaon), M/s Gurdial Sharma, Railway Contractor, Rewari (Gurgaon) and M/s Bhagwati Devi, Railway Contractor, Rewari (Gurgaon), are Railway Contractors for the sale of sweets, puries, etc., at the Railway Station, Rewari. They have been carrying on this business for a number of years under licences issued by the Railway

Authorities, as per terms and conditions contained in agreements executed in this behalf, which are renewed from time to time. The contractors have engaged Vendors for this purpose according to the number of trollies owned by them. The Vendors work in day and night shifts. The sweets and puries are supplied to them by the Contractors in prepared condition. They are paid Rs 96 per mensem as their fixed wages besides commission on the sales at 15 per cent.

For some time past the Vendors had been agitating their demand for grant of leaves and holidays as under the existing practice they are not given the benefit of any leaves or holidays not even a paid weekly rest. They had been approaching the contractors in this behalf from time to time and the matter was discussed in a meeting of the Vendors, their union leader Shri C.B. Kaushik, General Secretary, Railway Vendors Union (INTUC), Registered, Gurgaon, and the Contractors but without any success. Thereafter Shri C.B. Kaushik was authorised to raise the demand and he gave the demand notice to the contractors concerned. The Labour-cum-Conciliation Officer, Gurgaon, initiated conciliation proceedings but without any success and on receipt of the failure report from him in each case, the Governor of Haryana, in exercise of the powers conferred by clause (d) of sub-section (1) of Section 10 of the Industrial Disputes Act, 1947, has been pleased to refer the disputes for adjudication to this Tribunal which have been registered as Reference Nos. 109, 112, 113, 114 of 1970, the term of reference in each case being one and the same as given under :—

Whether the workmen are entitled to the grant of following leaves and holidays ? If so, with what details and from which date:—

1. Earned Leave;
2. Casual Leave;
3. Sick Leave;
4. National Holidays;
5. Festival Holidays”?

On receipt of the above references notices were given to the parties concerned and they filed their written statements. The workmen reiterated the claim for leaves and holidays detailed below :—

- |                        |            |
|------------------------|------------|
| (i) Earned Leave       | .. 15 days |
| (ii) Casual Leave      | .. 7 days  |
| (iii) Sick Leave       | .. 7 days  |
| (iv) National Holidays | .. 3 days  |
| (v) Festival Holidays  | .. 4 days  |

The management contested their above claim on merits and raised some preliminary objections giving rise to the following issues which are common in all the cases:—

*Issues.—*

1. Whether the contract of licence is with the President of India and for this reason the authority to refer the dispute in respect of the respondent lies with the Central Government and the present reference is not valid ?
2. Whether the applicant is employee of the respondent and for this reason the reference is valid ?
3. Whether the business carried on by the management is not in industry covered by the Industrial Disputes Act and the present workers are not entitled to raise the demand the subject-matter of reference ?
4. Whether the workmen are entitled to the grant of the following leaves and holidays ? If so, with what details and from which date :—
  - (1) Earned leave;
  - (2) Casual Leave;
  - (3) Sick Leave;
  - (4) National Holiday;
  - (5) Festival Holidays ?

Since common questions of law and fact are involved in all the cases and the evidence led on both sides is also the same, I propose to dispose of all the four references by one and the same judgment.

There being no evidence that the said business was run by or under the authority of the Central Government and the Railway Contractors having admitted that the Vendors concerned were their employees, Issues Nos. 1 and 2 were decided against them,—*vide* order, dated 18th March, 1971.

On the remaining issues Nos. 3 and 4, the Railway Contractors have made their own statements and brought on record some documents including agreement Exhibit M.W. 2/2.

The workmen, on the other hand, have examined two witnesses, namely, Shri Maman Chand, Secretary and Shri C.B. Kaushik, General Secretary of the Railway Vendors Union Regd., besides making their own statements. The documents relied upon by them consist of :—

1. Complaint, dated 21st August, 1970, Exhibit W.W. 3/1.
2. Demand notice, dated 4th February, 1970, Exhibit W.W. 3/2.

Arguments have been addressed on both sides at sufficient length and I have been referred to a number of authorities. Written arguments have also been filed.

Taking into consideration the facts on record and the rule of law laid down by Hon'ble the Supreme Court and the High Court in a number of cases cited, I have no doubt whatever in holding that the activity embarked upon by the Railway Contractors in the cases before me is an industry as defined under section 2(j) of the Industrial Disputes Act, 1947, and the present claimants are workmen under them within the meaning of law. Both are engaged in catering to the material needs of the public at large and the work is carried on by them in co-operation with each other. The Railway Contractors supply the sweets and puries, etc. in prepared condition and the present claimant who have been engaged as Vendors actually sell the same to the passengers at the Railway Station. This work has been carried on systematically over a long period of years and in accordance with the terms and conditions of the agreements entered into by the Contractors with the Railway Authorities. The sweets and puries are sold at the rates fixed by the Railway Authorities and the Contractors as well as the Vendors have to comply with certain other conditions laid down in the agreements regarding cleanliness of the things offered for sale, wearing of uniforms by the Vendors and their decent behaviour towards the passengers. It is not something which is done in a casual manner or for the sake of pleasure nor is it done in exercise of purely Government functions.

Profit motive is not an essential ingredient of an industry, as defined under section 2(j) of the Act. However, the element of profit is also not lacking in the activity involved in the instant cases. According to the showing of the railway contractors themselves each Vendor in addition to his monthly wage of Rs 96 gets 15 per cent commission on sales which on the average comes to about Rs 300 P.M., and that being the case, the total sales of the railway contractor owning only one trolley on which two Vendors are engaged would be approximately worth Rs 4,000 P.M. Obviously this work is carried on with a view to earn profits and the fact that the railway contractors have been carrying on this work for a very long period, in some cases from one generation to another, further lends strength to the belief that they have found it to be a profitable business. There is nothing on the record to suggest that they have undertaken this business from purely humanitarian or charitable point of view.

It would thus appear that the activity undertaken by the railway contractors discussed above has all the attributes of an industry, as defined under section 2(j) of the Industrial Disputes Act. The learned representative of the Contractors has not been able to satisfy me to the contrary. The Vendors, the present claimants, are admittedly their employees. The claim for leaves and holidays put forward by them manifestly relates to the conditions of their service and the same having been disputed by the contractors who are their employers an industrial dispute within the meaning of law did exist in each case which has been referred for adjudication to this Tribunal by the competent authority.

The learned representative of the railway contractors concerned has argued that the Vendors had not first raised the demand in question on their employers before taking up the matter to the Conciliation Officer which was necessary according to the rule of law laid down by the Hon'ble Supreme Court in Sindhu Re-settlement Corporation case, and as such, it could not be held that any industrial dispute existed between the parties which could validly be referred for adjudication to this Tribunal. The contention which has been strongly refuted by the learned representative of the Vendors has no force and, in the absence of any specific plea having been raised in the written statement in this behalf the same is not tenable. However, it will not be out of place to consider here that the Vendors have led some evidence to show from their own statements as well as from the sworn testimony of the Secretary and General Secretary of their union that before giving the demand notice to the Labour-cum-Conciliation Officer, the contractors had been approached for the satisfaction of the demand for leaves and holidays and some discussions had been held between the contractors and the union leaders at Rewari. There is no reasonable rebuttal of this sworn testimony and the meeting of the union leader and the railway contractors for the settlement of the disputes between the parties has in a way been admitted.

No other point worth consideration has been urged and that disposes of issue No. 3 which, for the reasons aforesaid, is held in favour of the workmen and against the management.

#### *Issue No. 4*

The relationship of employers and employees, as per the requirements of the provisions of the Industrial Disputes Act, 1947, having thus been established in all the cases before me, not much remains to be discussed with regard to issue No. 4 which relates to the main term of reference. The right of the employees for paid

leaves and holidays asked for by the Vendors in these cases had been recognised in all institutions and industrial establishments, both public and private, and the denial of this right to the present claimants would be sheer injustice, to say the least, nor can it be considered congenial to harmonious relations between the employers and the employees and for proper and efficient running of the business. The learned representative of the management has during the course of arguments laid some stress on the fact that the present claimants are governed by the provisions of the Punjab Shops and Commercial Establishments Act and they have chosen the wrong forum for the redress of their grievances. The contention has no force in view of my above finding on issue No. 3. According to the sworn testimony of all the workmen no officer has ever checked their work as required under the Punjab Shops and Commercial Establishments Act. Even according to the provisions of the aforesaid Act the employees in the shops and other commercial establishments are entitled to various kinds of leaves and holidays. The contention raised on behalf of the Railway Contractors is, therefore, repelled.

The learned representative of the railway contractors has raised still another contention. It has been urged that when the commission on sales was raised from 10 to 15 per cent some two years back the Vendors had agreed not to raise any other demand and the grant of relief asked for by them now would cause an unjustifiable financial burden on them. There is no evidence worth the name to substantiate this contention. No agreement in writing has been brought on the record nor has any independent evidence been produced to support this contention. The bald statements of the railway contractors themselves cannot safely be believed to deprive the Vendors of their legal right to leaves and holidays especially when they have categorically denied the plea of the said agreement along with their two union leaders who have come into the witness box. No documentary or oral evidence has been produced to show the exact financial position of the railway contractors relating to the business involved in the present cases. The payment of 15 per cent commission on sales which according to their own showing comes to approximately Rs 300 P.M. in the case of each Vendor is by itself indicative of the fact that they are surely making considerable profits out of this business, and that being the case, it cannot be believed that they are not in a position to bear the financial burden likely to be caused by meeting the demand of the Vendors for leaves and holidays. It will not be out of place to consider here that by availing of the leaves and holidays the vendors would forego as much as three times their daily wages in the form of commission on sales. Moreover, the increase in the financial burden, if at all any, cannot be a valid ground to deprive an employee of his well recognised right for leaves and holidays.

So, taking into consideration the facts of each case, the nature of the industry involved and the duties performed by the present claimants, I decide this issue in their favour, and, in the result, they are entitled to paid leaves and holidays, as per details given below, with immediate effect :—

1. National Holidays .. Three National Holidays on 26th January, 15th August and 2nd October.
2. Festival Holidays .. Four in a calander year, namely, Holi, Diwali, Dussehra and Janam Asthmi.
3. Casual leaves .. Six in a calander year.
4. Earned leave .. 12 in a calander year.
5. Sick leave .. Six in a calander year.

Casual leave shall not be available to a Vendor for more than two days at a time nor shall it be combined with any other kind of leave except with the express permission of the railway contractor concerned. The casual leave unavailed during a calander year shall automatically lapse.

In addition to the above leaves and holidays the Vendors would be entitled to the paid weekly rest for one day.

The award is made accordingly but with no order as to cost.

Dated 25th January, 1972.

O. P. SHARMA,  
Presiding Officer,  
Industrial Tribunal, Haryana,  
Faridabad.

No. 148, dated the 25th January, 1972.

Forwarded (four copies) to the Secretary to Government, Haryana, Labour and Employment Departments, Chandigarh, as required under section 15 of the Industrial Disputes Act, 1947.

Dated 25th January, 1972

O. P. SHARMA,  
Presiding Officer,  
Industrial Tribunal, Haryana,  
Faridabad.